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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 CHARLES NERO,) CV 08-4773-SVW (PJW)
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12 Plaintiff,)
13 v.) ORDER ADOPTING FINDINGS,
14 SHERIFF LEE BACA, et al.,) CONCLUSIONS AND
15 Defendants.) RECOMMENDATIONS OF UNITED
16 STATES MAGISTRATE JUDGE
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17 Pursuant to 28 U.S.C. § 636, the Court has reviewed the First
18 Amended Complaint, the records on file, and the Final Report and
19 Recommendation of the United States Magistrate Judge and has considered
20 *de novo* the portions of the Report as to which objections have been
21 filed. The Court adopts the Magistrate Judge's report, but writes
22 separately to further address Plaintiff's claims against Sheriff Baca.

23 The case law is clear that "[t]here is no respondeat superior
24 liability under § 1983." Mortimer v. Baca, 594 F.3d 714, 721 (9th Cir.
25 2010). Supervisors may be held liable in their individual capacities,
26 however, for (1) their own culpable action or inaction in the training,
27 supervision, or control of subordinates, (2) their acquiescence in the
28 constitutional deprivation of which a complaint is made, or (3) for

1 conduct that showed a reckless or callous indifference to the rights of
2 others. Cunningham v. Gates, 229 F.3d 1271, 1292 (9th Cir. 2000).
3 Where, as here, a plaintiff sues a government officer in his official
4 capacity, the suit is equivalent to one brought against the government
5 entity. Ctr. for Bio-Ethical Reform, Inc. v. Los Angeles County
6 Sheriff Dept., 533 F.3d 780, 799 (9th Cir. 2008). In order for a
7 government entity to be liable for failure to train its employees, the
8 plaintiff must show that the failure to train was the entity's official
9 policy and amounted to "deliberate indifference" to a constitutional
10 right. Clouthier v. County of Contra Costa, 591 F.3d 1232, 1249 (9th
11 Cir. 2010).

12 Plaintiff alleges in his First Amended Complaint that Baca failed
13 "to properly train these officers and supervise them." (FAC at 3.)
14 Furthermore, in response to a request for admission, Plaintiff contends
15 that Baca "trains his sheriff deputies to kill innocent people to also
16 violate all federal constitutional rights. This is what he trains his
17 deputies to do" (Rathbun Decl. Ex. B at 2.) To the extent
18 Plaintiff alleges a claim against Sheriff Baca for failure to properly
19 train, either in Baca's individual or official capacity, Plaintiff's
20 claim does not survive summary judgment. Plaintiff has introduced no
21 admissible evidence to demonstrate that Baca failed to train officers
22 generally or more specifically regarding the allegations in the
23 Complaint. Therefore, Plaintiff has not met his burden under Rule 56,
24 and summary judgment in favor of Defendant Baca is appropriate. See
25 Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Plaintiff "may
26 not, in defending against a motion for summary judgment, rest on mere
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1 allegations or denials of his pleadings." Anderson v. Liberty Lobby,
2 477 U.S. 242, 259 (1986); Fed. R. Civ. P. 56(e)(2).

3 The Magistrate Judge's reasoning with respect to Defendant D.O is
4 sound.

5 Accordingly, IT IS ORDERED that Judgment be entered (1) approving
6 and adopting the Final Report and Recommendation (2) directing that
7 Defendant Baca's motion for summary judgment be granted and Plaintiff's
8 suit against him be dismissed with prejudice, and (3) directing that
9 the action against Defendant D.O. be dismissed without prejudice.

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12 IT IS SO ORDERED.



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15 DATED: 4/07/10

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STEPHEN V. WILSON
UNITED STATES DISTRICT JUDGE